

1 A Yes.

2 Q So, would it be reasonable to assume that a ILEC
3 would consider its cost in providing the element in
4 determining whether a competitor's offer was worth
5 accepting?

6 A Certainly.

7 Q And --

8 A I'm sorry, that is one element of what it
9 considers, demand is the other.

10 Q If the Commission were to set about setting a just
11 and reasonable rate for a network element, wouldn't it then
12 be reasonable for the Commission to consider BellSouth's
13 cost in providing that element under the same way, not
14 limiting its consideration to the cost, but considering the
15 cost in reaching that determination?

16 A Sure, if the Commission is trying on its own with
17 its own skills to estimate what the intersection of what the
18 supply and demand curve in competitive markets would produce
19 it needs to know what the demand curve looks like.

20 Q If I can get you now to turn -- sorry to be
21 jumping around like this -- but to page 1 of your testimony.

22 A Yes.

23 Q You quote from an opinion of Justice Breyer
24 concurring in part and dissenting in part from the majority
25 in AT&T v. Iowa Utility Board, the 1999 Supreme Court case,

1 correct?

2 A Yes.

3 Q And the excerpt that you quote from discusses the
4 impact of unbundling requirements on competition, correct?

5 A Yes.

6 Q And in this portion of the Justice's opinion, he
7 is discussing the vacatur of the FCC's Rule 319, correct?

8 A I believe that's correct.

9 Q And is it correct that the FCC's Rule 319 is on
10 unbundling under Section 251(c)(3) of the federal telecom
11 act?

12 A I'll take that subject to check, yes.

13 Q Okay, and that's not what we're doing in this
14 proceeding, right, we're looking at a standard under Section
15 271?

16 A Yes. Justice Breyer's technical opinion as to
17 what he was talking about is not directly relevant here, it
18 is the economics of it that's relevant. Mainly that more
19 unbundling does not mean more competition and indeed means
20 less, that was the point of the exercise.

21 Q Okay, I just wanted to clarify what he was
22 discussing at the time when he made that analysis.

23 A Yes.

24 Q Finally -- not quite finally, but on page 4 of
25 your testimony, you state that the Commission already

1 approved 60 BellSouth's commercial agreements under Section
2 252 and therefore has already held that the rates contained
3 in those agreements were just and reasonable, correct?

4 A Yes.

5 Q Are you familiar with Section 252 of the federal
6 telecom act?

7 A I've certainly read it, yes.

8 Q Okay, now Section 252(e)(2) states that state
9 commissions may only reject an agreement adopted by
10 negotiation under subsection (a), if it finds that, one, the
11 agreement or portion thereof discriminates against a
12 telecommunications carrier not a party to the agreement or
13 to the implementation of such agreement or portion is not
14 consistent with the public interest, convenience and
15 necessity. Is that a fair reading of the statute, to your
16 recollection? I can provide it to you if you'd like.

17 A It exceeds my recollection --

18 Q Okay.

19 A -- but I'll take it subject to check.

20 Q Okay, thanks. It's possible then, isn't it, that
21 this Commission considered the rates in the commercial
22 agreement to be too high, but not discriminatory or
23 inconsistent with the public interest, convenience and
24 necessity, correct?

25 A Well, of course anything is possible, except I

1 don't distinguish myself much between public interest,
2 convenience, and necessity and just and reasonable. I'm not
3 sure that I can write an essay explaining why those are
4 different.

5 COMMISSIONER BAKER: Have you looked at any of the
6 rates in those 60 contracts to see what they were to make
7 some kind of a quick analysis of the variation between them?

8 THE WITNESS: No, I haven't.

9 BY MR. WALSH:

10 Q It's an interesting argument you raise as to
11 whether the Commission could deny, could reject an
12 interconnection agreement based on it thinking that the
13 particular rates that the two private parties had entered
14 into were too high, but you would agree that that turns on
15 the Commission's interpretation of public interest, correct?

16 A Yes.

17 Q And there's no orders of the Commission stating
18 that it's determined that the rates in those agreements were
19 just and reasonable, correct?

20 A None that I'm familiar with.

21 Q Okay, and public interest could be viewed as the
22 interest of the public at large and not the individual
23 competitor that has entered into an agreement with
24 BellSouth, correct?

25 A It's conceivable, but not logical. I mean, it

1 seems to me that if the rates were unjust and unreasonable,
2 then customers must suffer from that, and by customers I
3 mean customers beyond the CLEC that have to pay it. And
4 those are the public whose interest is what we're looking
5 for. So, as I said, I don't think I can draw a strict line
6 between rates which are unjust and unreasonable, but which
7 are nonetheless in the public interest, I don't think I
8 could find such a rate.

9 COMMISSIONER BAKER: Dr. Taylor, don't the
10 commercial agreements contain, I don't know, if not
11 hundreds, sometimes thousands of different provisions other
12 than just pricing provisions?

13 THE WITNESS: Absolutely.

14 COMMISSIONER : And -- and when you're negotiating
15 a contract you're looking at sort of the totality of the
16 contract, not just normally a single element?

17 THE WITNESS: Sure.

18 COMMISSIONER BAKER: So, you may have some give
19 and take as far as -- you may think the price is
20 unreasonable, but I need it now and there are other
21 conditions contained within the commercial agreement which
22 are advantageous to me, so I'm not going to fuss with the
23 price or I'm making concessions and overall, I'll accept the
24 commercial agreement because of the totality of all of the
25 terms and conditions that I've negotiated.

1 THE WITNESS: Oh, I'm sure that's correct, and I
2 think that's exactly the right -- the right analysis. And I
3 think that's what you apply when you look at whether rates
4 are just and reasonable, that is to pick out a single rate
5 from the thousands of rates that a telephone company
6 provides and ask is this rate, looked at by itself, just and
7 reasonable? I don't think you can answer that question. My
8 favorite example is switched access, I mean, that was 16
9 cents a minute in 1984 and that was just and reasonable in
10 the FCC's mind, not because a price thousands of times
11 incremental cost made sense, but because it made sense in
12 the totality of the rest of the rates that were involved in
13 access at the time.

14 So, I'm very much inclined to agree with you that
15 looking at rates individually and trying to apply a just and
16 reasonable standard is a very dangerous thing to do.

17 BY MR. WALSH:

18 Q Mr. Taylor, you're aware that when the Commission
19 issued rates under 251/252 under the cost docket, that an
20 individual CLEC was not required to take advantage of the
21 Commission's rates? Are you aware of any times that the
22 Commission rejected an interconnection agreement between
23 BellSouth and one of its competitors because it did not
24 adopt a particular rate that the Commission ordered in a
25 cost docket?

1 A No.

2 Q Okay, does BellSouth have commercial agreements
3 for anything other than DS0's?

4 A You mean unbundled loops?

5 Q Yes.

6 A I think so, but I don't know specifically.

7 Q Okay, thank you.

8 MR. WALSH: Mr. Chairman, that's all the questions
9 that I have.

10 CHAIRMAN WISE: Thank you, very much. CUC?

11 MS. MELLINGER: No questions.

12 CHAIRMAN WISE: Thank you. AT&T?

13 MS. OCKLEBERRY: No questions.

14 CHAIRMAN WISE: Competitive Carriers?

15 MR. MAGNESS: Thank you, Mr. Chairman.

16 FURTHER CROSS EXAMINATION

17 BY MR. MAGNESS:

18 Q Dr. Taylor, do you have a copy of the triennial
19 review order?

20 A No.

21 Q Okay, I can show you mine as we look at it. I
22 only have one.

23 A I have pieces of it. Tell me the paragraph.

24 Q Okay, we don't need to look at it right now, I
25 just thought it might save us some time. Do you have a copy

1 that you can show him. Okay, we'll talk about it when we
2 get there.

3 Dr. Taylor, what is the actual just and reasonable
4 rate you're proposing in this proceeding for high capacity
5 loops that have been delisted under Section 251?

6 A I am proposing that the Commission use as a -- a
7 benchmark the special access rate, the intrastate special
8 access rates, I guess, for intrastate services; and any
9 rates that are contained in commercial agreements. And by
10 "use," I mean treat those rates as if they were just and
11 reasonable.

12 Q Okay. Well, then, what -- what is the intrastate
13 special access rate that you propose is a just and
14 reasonable rate for high capacity loops delisted under
15 Section 251 in Georgia?

16 A Do you mean the -- the dollar value of it?

17 Q Yes.

18 A I'm -- I don't know. I'm not familiar with the
19 tariff.

20 Q Okay. You were talking to Mr. Walsh earlier about
21 fatally ambiguous numbers. I mean, you don't -- you don't
22 even have a range of what you can tell the Commission you're
23 proposing?

24 A Well, I'm not proposing. BellSouth is proposing.
25 I'm telling you what a just and reasonable process is, and

1 the just and reasonable process that I think applies here is
2 the one that says go look at the commercial agreements, go
3 look at tariffed special access rates.

4 Q But you don't know what those are?

5 A That's correct.

6 Q Okay. But it's your recommendation that the
7 Commission adopt them, even though you don't know what they
8 are?

9 A Yes, that's correct.

10 Q Okay. And the answer may be similar. Just let me
11 know if it is. What is the rate that you're proposing for
12 dedicated interoffice transport in this proceeding?

13 A Same answer.

14 Q And what is the rate that you're proposing for
15 unbundled local switching?

16 A Again, same answer.

17 Q Okay. You referenced going to look at the
18 tariffs. I'm not sure if BellSouth let you know, but in the
19 order initiating this docket -- I'll just quote from page 4.

20 The Commission said, "The Commission will proceed with an
21 expedited hearing schedule as detailed below for the purpose
22 of setting just and reasonable rates for delisted UNEs
23 pursuant to Section 271."

24 So if you're about the business of setting a rate,
25 what is the rate that you recommend and BellSouth proposes

1 for unbundled local switching?

2 A And the answer is look at the rates that are
3 contained in commercial agreements. Look at the rates that
4 are contained in tariffed access filings. And that's --
5 that's all I have --have to contribute. My answer as an
6 economist is to look at what the FCC, which is the standard
7 -- at least I think the relevant standard for what just and
8 reasonable is, and look at what they've said constitutes a
9 process for coming up with just and reasonable rates. I
10 haven't done that, and I don't know the number.

11 Q Well, given that we're engaged in a process of
12 setting just and reasonable rates in this proceeding, is it
13 correct that you are proposing a process in this process,
14 and not proposing a rate?

15 A I'm proposing a standard, Mr. Magness. I'm not --

16 Q Okay.

17 A BellSouth will propose the rate. I'm not
18 proposing a rate.

19 Q Recommending a rate to the Commission.

20 A Well, "propose," "recommend," I'm not sure what
21 the difference is.

22 Q Do you know if BellSouth has filed any testimony
23 besides yours that proposes a rate for these elements?

24 A In this proceeding I don't believe I know of one
25 except for unbundled -- for high frequency DSL.

1 Q That's in Mr. Williams' testimony?

2 A Correct.

3 Q Okay. How -- how would I go about finding out
4 what the proposed local switching rate is? I understand you
5 have not reviewed any of the commercial agreements that
6 BellSouth has -- has entered into for DS0 switching or --

7 Well, for DS0 switching. Right?

8 A Correct.

9 Q Okay. And yet, whatever it is that's in those
10 commercial agreements, it's your recommendation that the
11 Commission adopt as just and reasonable?

12 A That's correct. Because those rates were
13 determined in -- through competitive market forces.

14 Q And how would -- how would I go about finding out
15 what those rates are?

16 A Well, the way I think that the FCC intends that
17 you find them out is that you enter into negotiations with
18 BellSouth for a commercial agreement between whoever you
19 represent and BellSouth.

20 Q Okay. So if the Commission was -- was seeking to
21 do what it said it was going to do in this proceeding, and
22 that is set a just and reasonable rate, it -- it can't do
23 that, right, under your view of how this works?

24 A No. It has -- assuming that it wanted to set a
25 number, it has access to commercial agreements. So

1 BellSouth will propose a number; other parties may propose
2 -- I believe your parties have proposed a number.

3 Q Uh-huh.

4 A And the Commission can candle those numbers
5 against the standard from the TRO, which says, "What do
6 those numbers look like compared with competitive market
7 rates from commercial negotiations on the one hand, or
8 tariffed rates that some regulator has determined to be just
9 and reasonable?"

10 COMMISSIONER BAKER: And should it be the average
11 of the commercial agreement rates looked at? Or what about
12 if from one of those 60 agreements there was a CLEC that,
13 for whatever reason, was willing to pay, you know, 500
14 percent, 1000 percent over a -- a reasonable commercial
15 rate, for whatever reason, you know. There are various
16 reasons. Is that the standard that we're going to use to
17 say that, hey, this -- this CLEC is willing to pay 1000
18 percent over what is a average cost; and because of that,
19 that is the -- I guess the range that we look to as far as
20 what is a commercially reasonable -- just and reasonable
21 rate? That if -- that if somebody -- if there is one
22 customer out there who will pay that rate, whatever it is,
23 then obviously it was negotiated through market
24 -- competitive market, and they agreed to it, no matter how
25 crazy you and I might think it is.

1 THE WITNESS: Well, no. I mean, looking back at
2 what the FCC says is going to happen here, I don't think it
3 contemplates your setting the rate. But suppose you were to
4 set a rate, and it was this rate that we all think is crazy,
5 but which some CLEC agreed to under some circumstances.
6 It's a weird CLEC. It's got something strange that meant
7 that this was a good deal for it.

8 COMMISSIONER BAKER: Right.

9 THE WITNESS: Now, what you're suggesting is: Are
10 we -- are you going to impose that same weird deal on every
11 other CLEC? And the sensible answer is: Why, no, that
12 doesn't make sense.

13 And what does the FCC say it will do about it? It
14 says, as I read the TRO, is that it will look at the rate
15 that gets charged as part of its 271 enforcement obligation
16 and say gosh, that's a -- that's a crazy rate. That's not
17 the rate that CLECs ought to be -- that BellSouth ought to
18 be permitted to be charged.

19 That's my understanding of how the process would
20 work. To say that a carrier might be -- might accept a rate
21 which looks strange to us because its circumstances are
22 strange is a perfectly true fact of competitive markets.
23 And to say that, you know, somehow that result ought to be
24 thrown out or ignored because it isn't like every other CLEC
25 is wrong, I think. I mean, that's one of the problems in

1 trying to regulate in markets that are at least open to
2 competition.

3 Carrier circumstances are different. And if
4 you're going to try to apply one rate, for example, to every
5 carrier, then you have got a problem.

6 COMMISSIONER BAKER: Right. But, I mean, going
7 back to your earlier discussion about what's just and
8 reasonable, and if there's a customer out there or a CLEC
9 out there that is willing to pay in a competitive market a
10 certain price, regardless of what the majority of CLECs or
11 consumers think is reasonable, then under your definition
12 that would be -- that would be a just and reasonable price
13 under -- under the circumstances of that contract.

14 THE WITNESS: That would be -- sure. Think of
15 what the circumstances are, though. I mean, it's like
16 buying bundles, you know. We can all think of buying, say,
17 new cars or something where the -- the dealer will throw in
18 a radio. I guess they don't have radios anymore. Whatever
19 sound system for -- you know, for free, as long as you buy
20 ten other things that -- that are -- at an outrageous price.
21 Well, all we know is that -- or what -- what's competitive
22 is the bundle.

23 So the CLEC that pays a fortune for switching, for
24 example, but gets a good deal somewhere else, on transport,
25 for example, that would be a competitive market standard

1 that you wouldn't apply piecemeal. But certainly the rates,
2 because we've assumed they've been done in a competitive
3 market, are just and reasonable, but you can't just pick one
4 rate out of the bundle and say wow, you know, that's a crazy
5 rate to impose on everyone else. How could it be just and
6 reasonable? Well, it's just and reasonable because of
7 something else.

8 BY MR. MAGNESS:

9 Q What would it indicate about a commercial
10 agreement if the CLEC just didn't have any lines that it was
11 actually operating under the commercial agreement? It
12 entered into the commercial agreement, let's say, but has
13 everything on resale, left everything on resale, but it
14 signed this agreement because BellSouth asked it to and --
15 does that provide us any indication of the justness or
16 reasonableness of a particular rate?

17 A Well, yes, I think I guess it -- I think it does.
18 It provides you even more information than that. It tells
19 you that whatever this rate is, that CLEC has some other
20 alternative, BellSouth resale, possibly, or some competitive
21 alternative or self-supply that's cheaper than the market
22 price. And --

23 Q How does it tell you that?

24 A Because the CLEC has the choice, I presume, of
25 supplying its lines with switching under the agreement or

1 with resale; right? I mean, it's negotiated an agreement,
2 it's got its price, and it's got all sorts of other
3 alternatives. It can always do resale; it could always buy
4 its own switch; it can always do some other things. And you
5 would expect that that CLEC every day is out there trying to
6 figure out what, for each one of its customers, the
7 cheapest, best way of provisioning serve -- what the
8 cheapest and best way of provisioning service is. Sometimes
9 that may involve using the lines, the unbundled elements
10 whose prices it's negotiated; sometimes it can do better
11 elsewhere. It's not surprising in a competitive market.

12 Q And what does it indicate about the justness and
13 reasonableness of a rate in a situation such as AT&T's
14 commercial agreement where AT&T said before it signed the
15 agreement it was leaving the residential market that it'd
16 been serving through UNE-P, ultimately merged with another
17 BOC. Does the -- does that sort of agreement that's
18 essentially part of an exit strategy tell us anything about
19 the justness or reasonableness of a rate?

20 A Well, I think it does in the sense that between
21 now and whenever, if ever, AT&T actually exists the -- the
22 mass market in Georgia, it is better off if it can negotiate
23 a lower rate to pay to serve the customers that it already
24 has. I don't know, I'm not privy to AT&T or SBC's strategy.
25 I don't know that they're going to be turning customers

1 off. And I mean by that customers in Georgia, not customers
2 in the SBC footprint.

3 And for every day that they're not, every nickel
4 that they can save by negotiating a lower switching rate is
5 a nickel for the corporation. So --

6 Q So is there anything about the fact that a
7 commercial agreement exists that doesn't inform whether it's
8 just and reasonable? I mean, it sounds to me like every
9 single thing about any rate might give us a sense that maybe
10 that's just and reasonable, theoretically. Any agreement of
11 any sort with any rate provides evidence of justness and
12 reasonableness; right?

13 A Any agreement brought about by two independent
14 parties who have no particular connection, at arm's length,
15 negotiated; both have alternatives; and, yes, those -- all
16 of the information that's contained in rates thus created is
17 useful information about what the market rate is.

18 Q And if this Commission or the FCC was setting a
19 just and reasonable rate, how -- again, how did they do
20 that? How do they establish that range --

21 A Well --

22 Q -- if they were -- if they choose to establish a
23 range or establish a range. I understand they could say
24 let's look at the process. But how do they go about that?

25 A Well, look at how the FCC has done it. I mean,

1 this is nothing new. The FCC has looked at ranges of just
2 and reasonable rates in lots of different contexts over the
3 years. And the examples I can think of are delisted
4 unbundled elements like access to operator services, for
5 example. The others are the new services test -- that's the
6 famous one -- where there is a wide -- historically very
7 wide range of rates which are considered to be just and
8 reasonable.

9 And the FCC looks at -- at that range, looks at a
10 range that's presented with it, determines whether
11 circumstances are unique about either the end points of the
12 range its looking at or the carrier whose rate is -- they're
13 examining, and says well, yeah, to us this looks like it's
14 just and reasonable candled up against the range of -- of
15 rates that we have determined in the past to be just and
16 reasonable. Doesn't mean they have to have a single number.

17 Q When you were formulating your recommendation in
18 your testimony here, did you examine any competitive
19 offerings available in Georgia for DS0 level local
20 switching?

21 A No. I've looked at lots of those, but not in
22 Georgia.

23 Q Did you conduct any analysis of those that
24 informed your testimony or recommendation?

25 A I'm sorry, I -- I may have answered too quickly.

1 You said for DS0 wholesale switching?

2 Q Yes.

3 A No, because I believe that the competitive
4 switching is not brought about by wholesale switching, but
5 by carriers' self-supplied switching. But the answer still
6 is "no."

7 Q So it's your understanding that there are no
8 -- there are not other wholesale offerings of switching in
9 Georgia available to CLECs, but rather, if a CLEC is not
10 using BellSouth switching, it's self-supplying?

11 A Yes. That's -- that's not based on a Georgia-
12 specific discovery, but that's my impression from -- from
13 the rest of the country.

14 Q Okay. And did you examine any competitive
15 offerings available specifically in Georgia for interoffice
16 dedicated transport?

17 A No.

18 Q Did you examine any competitive offerings
19 available in Georgia for high capacity loops?

20 A No.

21 Q Okay. Now, when you were talking to Mr. Walsh
22 earlier, you were talking a little bit about the grocer and
23 how the grocer figures out what the market is. The guy from
24 Publix goes to Safeway, looks at what his competitors are
25 offering. I guess, as I take it, BellSouth is contending

1 that the guy at Publix just has to go to another part of
2 Publix, for example, to look at special access rates that
3 are BellSouth rates, compare those against UNES, look at
4 commercial agreement --

5 A I'm lost. What is Publix?

6 Q Publix is a -- is a grocery store.

7 A Oh, thank you.

8 Q Yeah. Okay.

9 So I guess, and you -- you did not any way go and
10 look at Safeway in this analogy to try to figure out if
11 there were actual, competitively offered rates that would
12 provide the basis for a CLEC to go somewhere else beside
13 BellSouth; right?

14 A That's correct. The FCC determined in the TRO and
15 the TRRO that there was sufficient competition, that CLECs
16 aren't impaired, and that in the FCC's view market rates in
17 these markets are the ones that ought to -- to pertain. And
18 I don't think we want to -- well, I don't want to litigate
19 that again.

20 Q Well, so -- so, in essence, the guy in the -- the
21 butcher at Publix, if he wants to look at meat prices, need
22 only look at say the deli aisle at Publix and not look at
23 Safeway?

24 A No, that isn't the way it works. The way Publix
25 sets its prices, they may not even send anyone out to

1 Safeway at all. Rather, it's by experimentation, generally.
2 They raise the price a penny and see if they make more
3 money.

4 Q They try and recover their costs?

5 A No.

6 Q No?

7 A They don't try to recover costs. That's a
8 regulatory concept. You try to make money. So --

9 Q Okay, so you don't -- you don't know look at what
10 your competitors -- you don't look at what your competitor's
11 offering and you don't look at your own costs?

12 A No, no, no.

13 MS. MAYS: Mr. Chairman, could the witness be
14 allowed to finish his answers before we go to the next
15 question.

16 THE WITNESS: You're misstating what I said. Your
17 own costs are important because if you price below your
18 costs, no matter how successful you are at selling it,
19 you'll lose money. Yes, it may be cheaper for you to go
20 look and see what your competitors are pricing at if you
21 have competitors whose prices you can easily see. And in
22 wholesale telecommunications markets, that probably isn't
23 the case.

24 But the way prices are generally determined in
25 competitive markets is that thousands of little stores

1 change their prices day-to-day or week-to-week or month-to-
2 month, and observe what happens. That's the mechanism by
3 which prices reach a competitive market equilibrium.

4 Q And did you conduct any specific analysis of the
5 competitive conditions in the Georgia local market for
6 telecommunications as part of our testimony?

7 A No.

8 Q Now, finally I want to -- to talk to you a bit
9 about this thing you said the FCC said to do, which is to
10 use market-based prices; right?

11 A Yes.

12 Q Okay. In -- I suppose this is where I need to
13 come next to you and show you the Triennial Review Order.
14 Paragraph 651.

15 A Fortunately I have that one.

16 Q Okay.

17 A It's written on a T-shirt.

18 Q In Paragraph 651, and I'll just read the
19 beginning, "In the triennial review NPRN..."

20 Let me stop right there. First we have -- well,
21 we had the UNE remand order; right?

22 A Yeah.

23 Q Okay. Then we had the triennial review. Then we
24 had the triennial review remand order; right?

25 A I believe so.

1 Q So after the UNE remand, FCC had to go back to the
2 drawing board, and they issued the triennial review NPRN to
3 seek comments on what they should do next; right?

4 A Correct.

5 Q Okay. So, "In the triennial review NPRN the
6 Commission," that is, the FCC, "sought comment on how the
7 access requirement specified in Section 271, competitive
8 checklist, relate to the unbundling requirements derived
9 from Section 251(c) (3) and 251(d) (2)."

10 You with me so far?

11 A I am.

12 Q Okay. Now, a couple of sentences down it says,
13 "In the UNE remand the Commission also concluded
14 in that order that market prices should be permitted to
15 prevail for such network elements, rather than requiring
16 forward-looking prices"; right?

17 A That's correct. Where "that order" I presume is
18 the UNE remand order.

19 Q Right. And in the triennial review NPRN the
20 Commission asked for comment on whether that should still be
21 the standard; right?

22 A (No response.)

23 Q Well, let's just go to paragraph 652.

24 A Correct.

25 Q "Some commentators seek to alter the Commission's

1 determination in the UNE remand order, that Section 271
2 establishes a separate BOC access obligation for network
3 elements no longer listed under Section 251(c)(3)," and
4 here's the salient part, "and its conclusion that the
5 marketplace, rather than our TELRIC methodology, should
6 determine the price for delisted network elements under
7 Section 271." All right?

8 A Correct.

9 Q Okay. So they put it out for comment, and then a
10 few pages later they have a discussion. And first they talk
11 about the independent access obligation. And that's -- we
12 don't have any disagreements about that, I don't think.

13 A Right. Where are you, so I can keep up?

14 Q If you go to paragraph 656 --

15 A Right.

16 Q -- they then say what the prices, terms, and
17 conditions of these independent Section 271 obligations
18 should be; correct?

19 A Yes, it does.

20 Q Okay. And at the last sentence of paragraph 656
21 don't they say, "As set forth below, we find that the
22 appropriate inquiry for network elements required only under
23 Section 271 is to assess whether they are priced on a just,
24 reasonable, and not unreasonably discriminatory basis, the
25 standards set forth in Sections 201 and 202."

1 A That's correct.

2 Q All right. Okay. And further, in paragraph 663,
3 about the middle of the paragraph, the FCC says, "Thus the
4 pricing of checklist network elements that do not satisfy
5 the unbundling standards in Section 251(d)(2) are reviewed
6 utilizing the basic, just, reasonable, and nondiscriminatory
7 rate standard of Sections 201 and 202 that is fundamental to
8 common carrier regulation that has historically been applied
9 under most federal and state statutes, including, for
10 interstate services, the Communications Act."

11 So would you agree with me that in the triennial
12 review order the FCC looked at the question again and the
13 FCC said, "The standard is just and reasonable, not
14 unreasonably discriminatory"?

15 A It certainly says that, because that's Section
16 201, 202 of the Act. It has no authority to -- to overturn
17 that. It has still concluded, in my mind, that market
18 prices should be permitted to prevail, and my reading of
19 this section, particularly when we come to 664, we see that
20 the Commission, too, is willing to consider prices set by
21 market forces in these markets where CLECs have been found
22 not to be -- not to be im --

23 Q -- paired?

24 A -- impaired.

25 Q Dr. Taylor --